

Joint Coordination Procedures and Ecology Post-Construction Stormwater Report

INTRODUCTION

AGENCY CONSULTATION AND IMPACT REPORTING

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For FWCA Programmatic Coordination – do both connectivity and water quality criteria need to be met or just one?

Just a note that usually when a US Fish & Wildlife Services (USFWS)/National Marine Fisheries Service (NMFS) managed species such as a sea turtle comes up on the USFWS Information for Planning and Consultation (IPaC), it is typically only looking at what USFWS regulates. For sea turtles, it is only addressing nesting turtles, not swimming sea turtles which are managed by NMFS. There may be additional species of swimming sea turtles that could be in the Environmental Survey Boundary (ESB) that do not nest in Georgia and thus will not show up on IPaC. However, those listed species could still require evaluation with NMFS.

ECOLOGY POST-CONSTRUCTION STORMWATER REPORT (EPCSR)

The EPCSR title is confusing as it's a bit of a misnomer; it comes across as a report to be prepared post-construction (i.e., AFTER construction), such as stormwater quality monitoring, versus a feasibility analysis for identifying permanent, non-MS4 stormwater BMPs and water quality analysis.

Who is responsible for drafting the EPCSR?

What triggers an EPCSR? Does the EPCSR replace the regular Post-Construction Stormwater Report (PCSR) on projects where they are required?

What factors necessitate a water quality analysis? Do you only complete the Attachment A table for those waters that have protected species habitat or trigger the Fish & Wildlife Coordination Act (FWCA) or do you complete it for every resource, or every perennial resource?

Please provide examples of possible District construction & maintenance input.

PRE-CONSTRUCTION CONTRACTING

During contract negotiations, which fee estimate spreadsheet rows should include the ecologist & engineer Ecology Post-Construction Stormwater Report (EPCSR) hours?

INTRODUCTION

Georgia DOT (GDOT) hosted a Microsoft Teams live event on July 20, 2021. Session topics included Joint Coordination Procedures (JCP): Streamlining Consultation with the Federal Highway Administration (FHWA) and US Fish & the Wildlife Service (USFWS), and the Ecology Post-Construction Stormwater Report (EPCSR).

Learning objectives for the JCP portion included how and when GDOT coordinates with federal and state agencies; opportunities for environmental process streamlining and schedule recovery; current and future incentives for prioritizing ecological design; and which design changes do and do not require reinitiating agency consultations.

Learning objectives for the EPCSR portion included the purpose, applicability and contents of the EPCSR template; common water quality terminology; reasons to build a post-construction BMP; and reasons to not build a post-construction BMP.

Session presenters developed the following responses to questions posed by attendees.

AGENCY CONSULTATION AND IMPACT REPORTING

Please explain scenarios for using the Programmatic Assessment Worksheet (PAW).

The PAWs are for use on qualifying federally-funded and state-funded projects. There are two worksheets differentiated by funding source. These forms streamline the consultation process for protected species while ensuring consistent quality.

The PAW for federally-funded projects is used for projects that qualify for programmatic determinations as outlined in Appendix B of the Joint Coordination Procedures (JCP). Consultations under the following laws may qualify for a programmatic determination: the Endangered Species Act (ESA) (Section 7), the Georgia Endangered Wildlife Act, the Georgia Wildflower Preservation Act, Migratory Bird Treaty Act, Bald and Golden Eagle Protection Act, and Fish and Wildlife Coordination Act (FWCA). Projects qualifying for a programmatic determination require no further agency consultation.

Any action listed in Appendix B which normally would be programmatically excluded, but which could involve federally listed species or critical habitat due to unusual circumstances or conditions will require coordination in accordance with the JCP outside of the Standard Operating Procedure (SOP) for Programmatic Determinations. To qualify for a programmatic determination under the JCP Appendix B, project activities cannot:

- Require the acquisition of right-of-way (ROW) or easement,
- Be state funded,
- Impact jurisdictional Waters of the U.S. (WOTUS), or
- Adversely impact federally listed species.

Specific to ESA consultation, for transportation projects referred to in the SOP for Programmatic Determinations for Listed Species included in Appendix B, the Georgia offices of the U.S. Fish and Wildlife Service (USFWS), Federal Highway Administration (FHWA), Georgia Department of Natural Resource – Wildlife Resources Division of the (GDNR WRD) and GDOT have determined that the project actions would generally have a “programmatic no effect” (PNE) or a “programmatic may affect, not likely to adversely affect” (PMANLAA) determination on federally listed species or critical habitat.

The PAW for state-funded projects is modeled after the PAW for federally-funded projects but is separate from the JCP agreement. This PAW can only be used for state-funded projects that do not impact WOTUS; therefore, any project that may result in impacts to WOTUS (and requires Section 7 consultation with the US Army Corps of Engineers [USACE] as the lead federal agency) will not qualify for a state-funded PAW and additional studies will be required. The PAW can be used when in compliance with Section 9 of the ESA, the project does not result in “take” of federally and state listed species.

If a wetland that is not being bisected has more than 0.1 acre of impact, does it require Fish & Wildlife Coordination Act (FWCA) coordination? The new ecology Assessment of Effects (AOE) template has them listed separately as "newly bisected wetland" and "greater than 0.1 acre of impact," which makes it seem like they are separate criteria.

If a project does not impact water resources, FWCA consultation is not required. For projects that do impact a water resource, this impact may be exempted from FWCA consultation if one of the following three conditions is met:

1. The impacted water resource is not a Water of the US (WOTUS) as defined by the USACE or US Environmental Protection Agency (EPA).
2. The impacted WOTUS is an ephemeral, intermittent stream, open water, or wetland. Note that there is one exception to this exemption – impacts causing a high-quality wetland to become newly bisected, disconnected, or otherwise divided by a new alignment do require consultation under the FWCA.
3. Impacts to an individual WOTUS resulting in less than 100 feet or 0.1 acre of impact.

For FWCA Programmatic Coordination – do both connectivity and water quality criteria need to be met or just one?

Just one needs to be met. Per the signed agreement, a project is eligible for programmatic FWCA consultation if either the connectivity criteria or the water quality criteria are met.

Just a note that usually when a US Fish & Wildlife Service (USFWS)/ National Marine Fisheries Service (NMFS) managed species such as a sea turtle comes up on the USFWS Information for Planning and Consultation (IPaC), it is typically only looking at what USFWS regulates. For sea turtles, it is only addressing nesting turtles, not swimming sea turtles which are managed by NMFS. There may be additional species of swimming sea turtles that could be in the Environmental Survey Boundary (ESB) that do not nest in Georgia and thus will not show up on IPaC. However, those listed species could still require evaluation with NMFS.

Thank you for the reminder that NMFS (also referred to as NOAA Fisheries) is not a signatory of the JCP; thus, species under their jurisdiction are not subject to the provisions of this agreement.

ECOLOGY POST-CONSTRUCTION STORMWATER REPORT (EPCSR)

The EPCSR title is confusing as it's a bit of a misnomer; it comes across as a report to be prepared post-construction (i.e., AFTER construction), such as stormwater quality monitoring, versus a feasibility analysis for identifying permanent, non-MS4 stormwater BMPs and water quality analysis.

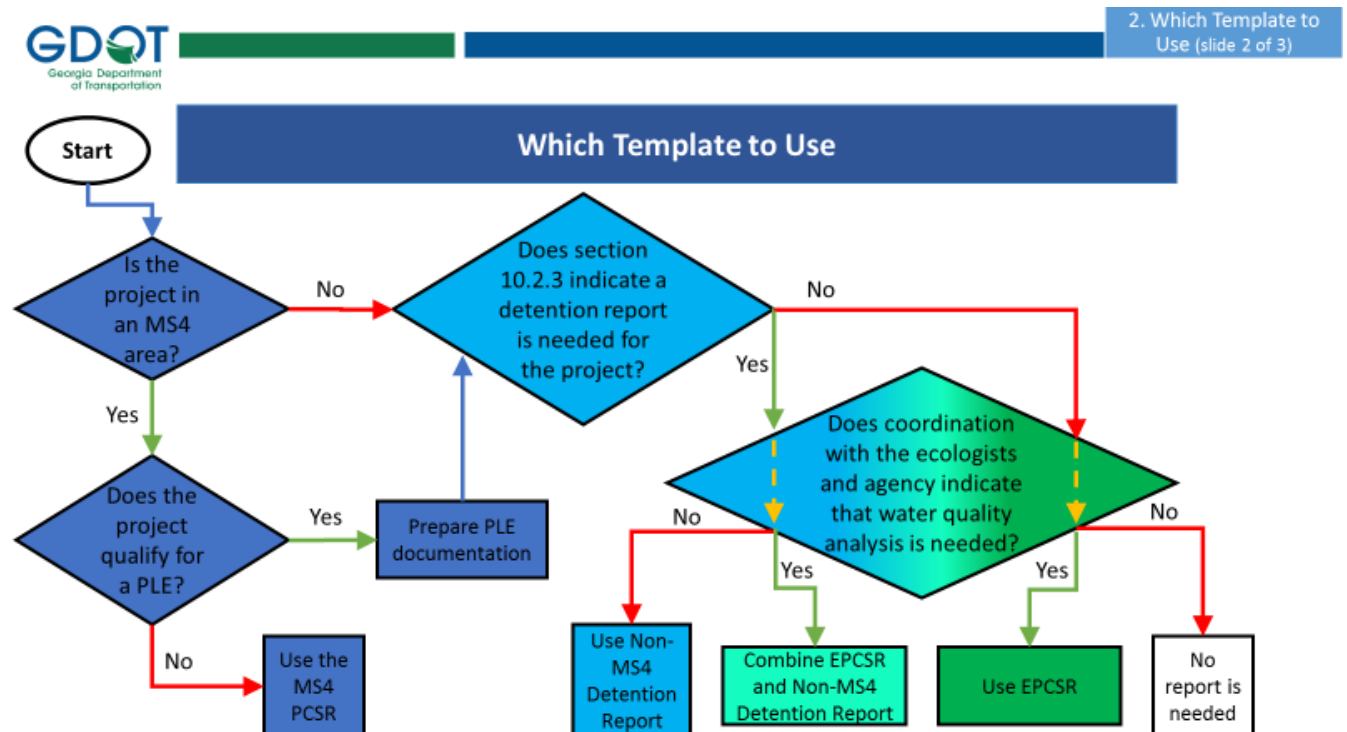
The first word, ecology, should tell the reader that the structure is being built for ecological purposes. The post refers to the fact that the water quality structure will remain in place after construction (i.e., post-construction). And stormwater report is a common term for water quality analysis across the US. Thus, the EPCSR analyzes permanent water quality structures built for ecological purposes.

Who is responsible for drafting the EPCSR?

The project Ecologist is tasked with filling out Attachment A columns 1 and 2; the project Designer completes the remaining portions.

What triggers an EPCSR? Does the EPCSR replace the regular Post-Construction Stormwater Report (PCSR) on projects where they are required?

The EPCSR is prepared when consultation with the US Fish & Wildlife Service (USFWS) concludes that water quality treatment needs to be assessed. If the project is in an MS4 area, then the water quality analysis will reside inside of the MS4 PCSR. Also, even if the BMP is found to be infeasible or qualify for an outfall level exclusion, the BMP may still be required based on ecological requirements.



What factors necessitate a water quality analysis? Do you only complete the Attachment A table for those waters that have protected species habitat or trigger the Fish & Wildlife Coordination Act (FWCA) or do you complete it for every resource, or every perennial resource?

In the context of this discussion on the EPCSR, water resources subject to FWCA consultation or protected species consultation should be entered into the Attachment A table. When evaluating ways to avoid or reduce impacts, the project Ecologist, in consultation with USFWS, will determine whether a water quality analysis is needed.

Please note that a water quality analysis may be required in other situations unrelated to the EPCSR. Specifically, a water quality analysis is needed to obtain a Section 401 Water Quality Certification for all Individual Section 404 Permits as well as Regional General Permit (RGP) 34s for new location facilities located in coastal counties and all RGP 35s in coastal counties.

Please provide examples of possible District construction & maintenance input.

District personnel contribute valuable information to the EPCSR discussion. For example,

1. Provide specific information about the area,
2. Ask questions about post construction BMPs,
3. Share their experiences with post construction BMPs, and
4. Provide input regarding their availability to maintain BMPs of different maintenance burden ratings.

PRE-CONSTRUCTION CONTRACTING

During contract negotiations, which fee estimate spreadsheet rows should include the Ecologist & design engineer Ecology Post-Construction Stormwater Report (EPCSR) hours?

Design hours needed to complete the EPCSR should be included in the Special Studies section on the DS1 tab. The Ecologist's minimal effort to populate columns 1 and 2 of Attachment A should be accounted for in their reporting and administrative hours; thus, no additional hours should be needed.